

Local Government Employee-Management Relations Board E-Newsletter

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Board Secretary

Decision Issued on SB 241 Case

SB 241 was signed into law on June 1st of this year. The bill made significant changes to collective bargaining. Two of these changes were at issue in this case: (1) a prohibition against the use of so-called evergreen clauses, including a prohibition on increases in employee compensation following the expiration of a CBA, and (2) the denial of union leave time unless the employee organization either pays for that leave time or gives concessions for the cost of that time.

SEIU and Clark County were parties to a CBA that expired in June 2013. However, the CBA specified that the agreement would renew for another year until replaced by a successor agreement. Thus, the CBA renewed several times, including the most recent period of July 2014 through June 2015, as no successor agreement had been entered into at that time.

On June 4th the County informed the SEIU President that it was cancelling his paid union leave. On June 9th the County informed SEIU that it was suspending pay increases retroactive to June 1st. The County claimed both were done in compliance with SB 241. SEIU thereupon filed a complaint with the EMRB alleging that the County had engaged in bad faith bargaining by making unilateral changes to the CBA.

The Board first held that SB 241 was to only apply prospectively, noting that Section 5 of SB 241 disclaims retroactive application and, further, that it is to apply to a renewal or extension entered into after the effective date of June 1st. Thus SB 241 would only apply to the County and SEIU as of July 1st.

The Board then held that the County committed a unilateral change when it revoked the union leave time in early June. This was because the 2012-2013 CBA was still in effect in that it had rolled over twice. The Board also held that the "full cost" requirement includes the cost of salary and any benefits, and applies to anyone using union leave time, whether on full-time release or not. The Board further held that there is a rebuttable presumption that existing CBA's include in them concessions for any union leave time and based this in part on two statutes that presume there is good and sufficient consideration in any contract and that it is presumed that a contract has obeyed the law. The Board then noted that nothing in the record overcame this rebuttable presumption and thus the County had committed a unilateral change when it revoked the union leave.

(cont'd on page 2)

Inside This Issue

- 1 Decision Issued on SB 241 Case** – Read about the decision in this important case
- 2 On the Horizon** – Learn about our upcoming meetings
- 2 Upcoming Election** – Read about an election on Saturday, December 5th
- 3 In the Queue** - See the cases waiting to be heard
- 3 Regulations Update** – E-Filing Regulations Now in Effect
- 3 Annual Filings Update**

On the Horizon

The next meeting of the Board will be held Tuesday, December 8th through Thursday, December 10th in Las Vegas. The agenda for this meeting has already been issued and can be viewed on our website. Two cases are scheduled for this meeting. The first is A1-046120, IAFF, Local 1908 v. Clark County. This case concerns whether the County has the right to place an appointive person into a bargaining unit and have that person be exempt from the provisions of the collective bargaining agreement.

The second case to be heard is 2015-008, Education Support Employees Association v. Clark County School District. In this case the ESEA alleges that the school district made a unilateral change for summer bus driver assignments to special projects. The school district contends that its actions were exempt from bargaining as hiring is a management right.

The January Board meeting will take place Tuesday, January 12th through Thursday, January 14th. At that time the Board will hear two more cases. The first is 2015-003, John Ducas v. Las Vegas Metropolitan Police Department. Ducas claims that he was the victim of discrimination at the hands of his superior and that the discrimination was because of his race, white, and his political views, conservative, when his superior was Hispanic and liberal and many members of his unit were also liberal. LVMPD denies the allegations. The second case for January is A1-046128, City of Las Vegas v. Las Vegas Peace Officers Association. This hearing will determine the scope of a proposed new bargaining unit for lieutenants. The case had previously been taken off calendar when it appeared to have tentatively settled, but is now back on calendar.

Upcoming Election

The EMRB is currently conducting a second runoff election between the Education Support Employees Association, which is the current bargaining agent, and Teamsters Local 14. The election will decide who is to represent the support staff employees who work for the Clark County School District. Ballots were mailed to 11,578 eligible voters on November 2nd and the ballots will be counted this coming Saturday, December 5th, at the Cashman Center in Las Vegas. Almost 100 volunteers will be on hand that day to assist the EMRB in the counting of the ballots. Per Board order the winner of the election will be the employee organization for whom the most votes were cast.

Decision Issued on SB 241 Case (cont'd from page 1)

The final issue is whether the County committed a unilateral change when it suspended the pay increases. The Board first noted that employee pay is a mandatory subject of bargaining. It then noted that SB 241 creates an exception to the general obligation to maintain the status quo pending expiration of a CBA. Under NRS 288.155(2) an employer may not increase levels of pay that exceed the amounts "in effect" as of the date of the expiration of a CBA. The Board then interpreted the words "in effect" to refer to the amounts of pay established by the terms of the CBA itself. Thus while the County could not increase the systems of pay in effect, it was still obligated to apply those systems of pay to the employees. Thus although employees were not eligible for COLA's the employees should have been eligible for step increases or increases in longevity pay, based upon the terms in the existing CBA. Board member Masters dissented from this part of the opinion, reasoning that the tone of the bill was to eliminate any increase in pay when a CBA expires, thus freezing all employee pay. She further noted that the Board's obligation is not to determine policy, but rather to give effect to the policy chosen by the legislature.

Please note that summaries of recent decisions are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. They also may be found on our website.

If you would like a copy of the full opinion, please contact the EMRB and we will send one to you. You will also be able to find a copy on our website on after December 7th.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

The Board has scheduled two cases for December. The first is A1-046120, IAFF, Local 1908 v. Clark County, which is expected to last two days. The second case is 2015-008, Education Support Employees Association v. Clark County School District, which will be on the third day of the upcoming Board meeting.

Also, the Board has scheduled two cases for January. The first is 2015-003, John Ducas v. Las Vegas Metropolitan Police Department while the second case is A1-046128, City of Las Vegas v. Las Vegas Peace Officers Association.

2015-001, Bramby Tollen v. Clark County Association of School Administrators and Professional-Technical Employees is scheduled for February 2016.

There is currently only one case in the queue awaiting a hearing date:

2015-009, Eric Rockwell and North Las Vegas Police Officers Association v. City of North Las Vegas

Regulations Update

Our e-filing regulations were unanimously approved by the Legislative Commission on October 27th. A copy of those regulations, which were previously sent to the attorneys on our mailing list, may be found on our website. Please note that our website also has a complete set of our regulations, which was issued by the Legislative Counsel Bureau prior to this latest update.

Annual Filings Update

The deadline has just passed for every local government and employee organization to file their annual report with the EMRB. We have had a great response so far and we thank everyone who has filed. If your entity has not yet filed please contact us at your earliest convenience and we will help guide you through the process, which is actually fairly simple. Also, if you have not filed please expect to be contacted by us. We will be posting updates to all the collective bargaining agreements, as well as a directory of local governments and employee organizations, by the end of December.

If you have any questions on the annual filing process please do not hesitate to contact us at the phone number or e-mail address below.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.